

Translation

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PATENT COOPERATION TREATY

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PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference S/R600009PCT	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP2003/008729	International filing date (day/month/year) 07 August 2003 (07.08.2003)	Priority date (day/month/year) 21 August 2002 (21.08.2002)
International Patent Classification (IPC) or national classification and IPC A61K7/00		
Applicant ECKART GMBH & CO. KG		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 6 sheets, including this cover sheet.  
☒ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 1 sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 24 February 2004 (24.02.2004)	Date of completion of this report 19 October 2004 (19.10.2004)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP2003/008729

## I. Basis of the report

### 1. With regard to the elements of the international application:\*

☐ the international application as originally filed

☒ the description:

pages \_\_\_\_\_ 1-9 \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

☒ the claims:

pages \_\_\_\_\_ 2-20 \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, as amended (together with any statement under Article 19  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_ 1 \_\_\_\_\_, filed with the letter of \_\_\_\_\_ 06 October 2004 (06.10.2004)

☒ the drawings:

pages \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

☐ the sequence listing part of the description:

pages \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

### 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).  
☐ the language of publication of the international application (under Rule 48.3(b)).  
☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

### 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.  
☐ filed together with the international application in computer readable form.  
☐ furnished subsequently to this Authority in written form.  
☐ furnished subsequently to this Authority in computer readable form.  
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.  
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

### 4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages \_\_\_\_\_  
☐ the claims, Nos. \_\_\_\_\_  
☐ the drawings, sheets/fig \_\_\_\_\_

### 5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

**INTERNATIONAL PRELIMINARY EXAMINATION REPORT**

International application No.

PCT/EP 03/08729

**I. Basis of the report**

1. This report has been drawn on the basis of *(Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to the report since they do not contain amendments.)*:

- 1 The definition of the thickness of the layer inserted in claim 1 was disclosed in the application as originally filed (page 5, line 4).
- 2 Owing to this amendment, claim 7 becomes redundant. Further, the description has not been brought into line with the amended claim 1.

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

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## V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

### 1. Statement

Novelty (N)	Claims	1-20	YES
	Claims		NO
Inventive step (IS)	Claims		YES
	Claims	1-20	NO
Industrial applicability (IA)	Claims	1-20	YES
	Claims		NO

### 2. Citations and explanations

- 1 Reference is made to the following documents, which were cited in the written report of 12 July 2004:

D1: WO 95/14732 A (ALCAN INT LTD)

1 June 1995 (1995-06-01)

D2: DE 198 36 810 A (MERCK PATENT GMBH)

17 February 2000 (2000-02-17)

D3: WO 91/04293 A (SILBERLINE MIT FREUNDLICHEN GRÜßEN CO) 4 April 1991 (1991-04-04)

D4: EP-A-0 338 428 (BASF AG)

25 October 1989 (1989-10-25)

D5: JP 09 227114 A (MORI S)

2 September 1997 (1997-09-02) (see English translation submitted with the letter from the applicant of 04 October 2004)

D2 is also acknowledged on page 2 of the present application.

### 2 Novelty (PCT Article 33(2))

- 2.1 The present application pertains to a metallic pigment for cosmetic preparations that has a metallic substrate and a barrier layer, the latter

being between 20 and 50 nm thick and produced by a sol-gel process. Said process has the advantage (see the description, page 4, lines 3-8) of giving an especially even, dense and consequently high-quality, visually imperceptible layer that is also innocuous from the viewpoints of health and hygiene as relevant to cosmetic use.

- 2.2 D1 describes a metallic pigment for paint, said pigment comprising metal flakes having a pigmented coat applied using a sol-gel process.
- 2.3 D2 discloses a metallic pigment coated with an aqueous medium. The pigment is used *inter alia* in the field of cosmetics.
- 2.4 D3 describes a metallic pigment for coating surfaces which has a metallic substrate with a pigmented polymeric coat.
- 2.5 D4 relates to titanium oxide-coated aluminium pigments for use *inter alia* in the field of cosmetics.
- 2.6 D5 discloses a pigment for cosmetic preparations which has a metallic oxide substrate and a coat provided with colouring pigments, said coat having a layer thickness of  $\geq 50$  nm and being produced by a sol-gel process. The colouring pigment is fixed to the metallic oxide substrate by the sol-gel process.
- 2.7 Claims 1-18 and 20 would therefore appear to be novel.

3     *Inventive step* (PCT Article 33(3))

- 3.1     D1, which would appear to be the closest prior art, pertains to a metallic pigment coated with an aqueous medium. The pigment is used *inter alia* in the field of cosmetics.
- 3.2     The present claims differ from the teaching of D1 in that the coating is applied using the sol-gel process.
- 3.3     This difference has the effect, as per the description, page 4, lines 3-8, of giving an especially even, dense and consequently high-quality, visually imperceptible layer that is also innocuous from the viewpoints of health and hygiene as relevant to cosmetic use.
- 3.4     It would be evident to a person skilled in the art that these advantages are consequent upon application of the sol-gel process. Although D5 uses the sol-gel process to fix colouring pigment to the metallic oxide substrate, this document contains suggestions that a layer produced by this method is not only innocuous from the viewpoints of health and hygiene as relevant to cosmetic use, but is also visually imperceptible (see paragraphs 0005, 0006, 0029 and 0030).
- 3.5     Since, in applying a simple coating to metallic pigments, a person skilled in the art may ignore the possible protrusion of colouring pigments from the layer, he is not obliged to ensure a layer thickness of  $\geq 50$  nm. Provided that the metal substrate is

covered, he is at liberty to produce thinner layers.

3.6 The available documents do not indicate whether a person skilled in the art should expect problems in coating a metal substrate: for example, in relation to a fatty acid deposit. Further, the present claims do not exclude removal of such a deposit before coating using the sol-gel process.

3.7 The present claims therefore fail to involve an inventive step.

#### Various

4 The sol-gel process is described on page 3, line 22 to page 4, line 8. It follows therefrom that this process is suitable for coating with metallic oxides, but not with all the materials shown in claims 3, 5 and 6. Claim 1 would therefore appear not to be fully supported by the description (*PCT Article 6*).

5 The application does not acknowledge D5 (*PCT Rule 5.1(a)(ii)*).